PB-250 788

SECTION 208 PROGRAM REVIEW

Environmental Protection Agency
Washington, D. C.

22 December 1975

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PB 250 788

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 23 1975

OFFICE OF
PLANNING AND MANAGEMENT

SUBJECT: Draft Report of the Section 208 Study Team

FROM: Alvin L. Alm, Assistant Administrator for Planning and Management

TO: Regional Administrators
Assistant Administrators
Office Directors

Attached is a draft report prepared as part of the evaluation of the Section 208/Areawide Planning Program. We would like to have your comments on the conclusions and recommendations, especially on the draft policy statement. We would appreciate your response by January 12, 1976. Please contact Walt Mardis, PM-222, Room 1017 West Tower, extension 755-0350.

Attachment

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BIBLIOGRAPHIC DATA SHEET	1. Report No.	2.	3. Recipient's Accession No.
4. Title and Subtitle Section 208 Program Review			5. Report Date 12/22/75 6.
7. Author(s)			8. Performing Organization Rept. No.
9. Performing Organization Name and Address Program Evaluation Division U.S. Environmental Protection Agency 401 M Street, S.W. Washington, D.C. 20460			10. Project/Task/Work Unit No. 11. Contract/Grant No.
12. Sponsoring Organization Name and Address			13. Type of Report & Period Covered 14.

15. Supplementary Notes
Draft

16. Abstracts

In July 1975, the Program Evaluation Division, at the request of the Office of Water Planning and Standards, undertook a review of the area-wide waste treatment management program under Section 208 of the Federal Water Pollution Control Act, as amended. This report is one of the products of that review

17. Key Words and Document Analysis. 17a. Descriptors
State and local involvement
areawide planning
Council of Governments

17b. Identifiers/Open-Ended Terms

17c. COSATI Field/Group

PRICES SUBJECT TO CHANGE

18. Availability Statement	19. Security Class (This Report)	21. No. of Pages
unlimited	UNCLASSIFIED	57
	20. Security Class (This Page) UNCLASSIFIED	22. Price 4.50

FORM NTIS-35 (REV. 10-73) ENDORSED BY ANSI AND UNESCO. THIS FORM MAY BE REPRODUCED USCOMM-DC 8265-P74

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Section 208 Program Review
(Draft)

Environmental Protection Agency
Program Evaluation Division
December 22, 1972

EXECUTIVE SUMMARY

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In July 1975, the Program Evaluation Division, at the request of the Office of Water Planning and Standards, undertook a review of the areawide waste treatment management program under Section 208 of the Federal Water Pollution Control Act, as amended. This report is one of the products of that review.

The field visits on which our findings and conclusions are based were conducted several months ago. Since that time OWPS has taken a number of remedial steps, partly in response to our initial reports. Among these are:

- Compilation of a profile of designated agencies with an inventory of each agency's priorities.
- Increased communication with EPA Regional, State and local officials.
- Greater attention to the financial management of the program.
- Promulgation of new guidance and regulations defining State responsibilities in the 208 program.
- Development, with other HQ offices, of additional guidance defining the relationship between areawide planning and related programs.

These steps represent important improvements of the program. Additional policy decisions and further management improvements, as recommended in this study, remain to be made, and must be made with recognition of the need for caution in implementing this complex, difficult to manage program.

The central conclusion of the study is that most grantees will not be able to complete all of the complex planning tasks demanded by Sec. 208 in the time allotted for preparation of the initial plan. This conclusion rests on the following findings:

- Overly ambitious expectations for the program. While OWPS has begun to provide guidance limiting the scope of the initial planning effort, the

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new policy thrust has not yet permeated all of EPA's policy formulation.

- "Fast start" problems caused by the issuance of the great majority of the grants in the final months of fiscal 1975. The Agency was poorly prepared in terms of policy, guidance, organization and resources for the sudden expansion of the program. These problems are recognized by OWPS and many of them, especially in the area of policy and guidance, have been overcome. More, however, remains to be done in the area of management and organization. Similar problems could face EPA in fiscal 1976. If all availabilities materialize, the Agency could have as much as $340 million to obligate, twice the previous year's level.
- Eighty percent of the agencies funded to date are Councils of Government (COG's). Many of them lack appropriate staff, organization and experience in the water pollution area.
- Practical limitations on what can be accomplished at the local level through areawide planning. Political realities tend to militate against the adoption or implementation the difficult solutions that may be required to solve existing water pollution problems. These difficulties are exacerbated by natural tensions between local governments and planning officials in COG's.
- Inherent constraints in the legislation such as:
  - Complex and overlapping requirements (Sec 106, 201, 208 and 303 (e)). The approach in the revised 130-131 Regulations, of assigning coordinating responsibility to the States, may ease problems stemming from overlapping requirements.
  - Insufficient lead times to sequence programs, forcing the implementation of operational programs (such as construction grants and NPDES) before or simultaneously related planning efforts.

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- Limited Federal authority to address non-point source pollution remedies.
- Enforcement mechanisms for Section 208 plans which appear to be practically unusable.

- The natural tendency to seek more and "better" information on which to base potentially controversial solutions to difficult problems.
- At least initially, insufficient attention to the need for a State role and for extensive constituency development. OWPS has issued regulations defining State responsibilities. More attention is being given to public participation as well.

In brief, the Sec. 208 program has a high potential for the dissipation of meager resources in the pursuit of an extensive number of complex objectives, and for interference with other more mature programs under P.L. 92-500. Consequently, the success of the program depends on EPA's ability to focus the efforts of grantees through a clearer definition of the program requirements, the relationship to other programs, and the priorities among the planning elements to be accomplished. Our major recommendations are:

- The States should be responsible not only for conducting areawide planning in non-designated areas but also for the coordination of the activities of agencies already designated. Future 208 funds should be allotted to States, and additional local agencies should be funded only in exceptional circumstances. This recommendation is in full agreement with the recently promulgated 130-131 Regulations.
- EPA should establish clear priorities among the objectives to be achieved through the program. Such priorities should be expressed in terms of the level of detail required for a given planning element

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and in the phasing of its completion. In this regard, full advantage should be taken of the fact that the initial plan is only the first step of the continuous planning process required by the law.

- In order to discharge its responsibility for administering a national program, EPA should ensure that some level of consistency exists in the outputs required of the grantees. "National Priorities" should be established by EPA HQ with Regional, State and local consultations. Additional local priorities should be determined by States and local agencies with Regional Office concurrence.
- Highest priority during the initial planning effort should be assigned to those problems not being addressed by other, ongoing Agency efforts. Emphasis should be on:
  - Development of solutions to non-point source problems.
  - Development of management institutions to implement non-point source pollution control measures.
  - Establishment of a continuing planning capability.
- Low priority during the initial planning effort should be assigned to:
  - Data gathering activities, including the monitoring, analysis and modeling of water quality parameters. Wherever possible, existing sources of water quality data should be utilized.
  - Point source issues including sewage treatment, pretreatment and NPDES permits.
- EPA should indicate Agency policy on this program by issuing the draft policy statement attached to this report.

Other important findings and recommendations of this study are:

- There is still some opposition to the preparation of EIS's for 208

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plans. The existing EIS regulations should be implemented. Regions should assume that an EIS will be prepared on most plans, and should utilize the "piggyback" approach to accomplish this.

- There is only limited policy guidance concerning the extent of the role 208 is expected to play in coordinating intermedia (air, solid waste, etc.) activities. Intermedia coordination should largely be a State and EPA Regional Office responsibility.
- EPA must improve its management of the program in the following ways:
  - More adequate and timely guidance communicated more effectively.
  - More meaningful outputs incorporated into the Formal Planning and Reporting System to permit continuous monitoring of program performance.
  - Greater attention to the review and analysis of sub-contracts entered into by 208 agencies.

In any long-range planning program, opportunities for mid-course corrections are few. Therefore, we cannot urge strongly enough that all the necessary corrective actions be taken now. Furthermore, increased top level management overview and support from related programs will have to be devoted to the areawide planning effort to assure that the implementation of Agency policy is proceeding successfully. Otherwise, EPA will run the risk of spending hundreds of millions of dollars of public funds without obtaining a commensurate improvement in the national effort to control water pollution.

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I. INTRODUCTION

The purpose of Section 208 of the Federal Water Pollution Control Act Amendments of 1972 (PL 92-500) is to foster the development and implementation of areawide waste treatment management plans. States are responsible for identifying, in accordance with EPA guidelines, areas with substantial water quality control problems, and for designating an organization responsible for developing a continuing management planning process as well as a comprehensive management plan. Management agencies with authority to implement control procedures will be designated in final 208 plans. The Administrator of EPA is authorized to make grants at 100% of the cost of developing and operating the planning process through FY 1975 and at 75% thereafter.

Initially, the Agency accorded a relatively low priority to 208 planning because of:

- EPA's decision, in response to Congressional and public interest, to place immediate emphasis on facilities planning under Section 201, the National Pollutant Discharge Elimination System (NPDES) under Section 402 and basin planning under Section 303(e).
- The organization of the Office of Water and Hazardous Material (OWHM) which encouraged a greater emphasis on 201 planning at the expense of other planning activities.

By mid-1974 however, OWHM's organizational structure had been altered

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and both external and internal pressure mounted for expanding 208 planning. As a result, steps were taken to expedite the program, and by July 1975, 149 local agencies with budgets of $163 million were certified for funding by the Office of Water Planning and Standards (OWPS).

Substantial program activity is expected in the future. Over 25 additional local areas have already requested funding. More importantly, a recent court decision (NRDC and EDF vs. Train and EPA) reaffirmed the States' responsibility for conducting 208 planning in those portions of the State that have not been designated for areawide planning. Congress has appropriated $53 million at a 75% rate for FY 1973 and additional funding for FY 1977 is being requested. Potentially, an additional $287 million may be available for fiscal 1976, $137 million from a court suit to recover lapse authorities from 1973 and 1974, and $150 million from the pending amendments to P.L. 92-500. Appropriations for FY 1976 and 1977 will be divided between areawide and Statewide agencies, at the discretion of the Regional Administrators.

Evaluation of the Program

In June 1975, the Deputy Assistant Administrator of OWPS requested that the Program Evaluation Division of the Office of Planning and Evaluation (PED/OPE) assist in conducting a comprehensive evaluation of the 208 program. As described in the study plan, the purpose of the review was to:

- Evaluate the objectives set by EPA for the 208 program as reflected in program policy statements, regulations, and strategies.
- Identify existing or potential constraints to program

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implementation and, where appropriate, propose solutions to these problems.

- Evaluate the management of the 208 program in terms of program guidance, resource utilization, organizational relationship, decision-making processes, and financial control.

To accomplish this task, a joint OWPS-PED Study Team was established. The Study Team conducted extensive research at EPA Headquarters, interviewing over 40 individuals in OWPS, the Office of Enforcement, the Office of the General Counsel, the Office of Planning and Management, the Office of Federal Activities, the Office of Water Program Operations, and the Office of Water Supply. Five EPA Regional Offices were also visited, along with eight State governments and 12 local 208 agencies.

During the course of the study, we made various recommendations to OWPS, and there has already been significant progress in correcting problems in a number of areas. We also worked with Centaur Management Consultants, Inc., which, under contract to OWPS, compiled profiles of all 208 agencies. Much of the backup data used in this report was derived from Centaur findings. We wish to express our appreciation to the Centaur staff and also to the many EPA, State, and local officials who assisted in the development of this study.

The remainder of the report addresses the policy issues facing the Agency, and the management improvements required to assure the efficient operation of the program.

II. POLICY DEVELOPMENT

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Our field visits during July and August of this year found a program very much in its initial stages. Of the 149 agencies, 135 had been funded recently. Many of these were still coping with such administrative details of "gearing up" as finding quarters and recruiting staff. Most were revising their workplans with, in their perception, little more guidance than was available for the first round. States, generally, had devoted few resources to the program and had not yet begun to formulate a clear role for themselves in the process, even though many of them had secured sizable funding commitments under the section's "pass through" provision. EPA, too, was suffering from "fast start" problems in face of the sudden surge of obligations in the last quarter of fiscal 1975. The Agency seemed poorly prepared in terms of policy, guidance, organization and resources for the sudden expansion of the program. A complicating factor was the recent court decision (NRDC and EDF vs Train and EPA) which reaffirmed that States were responsible for conducting area-wide planning in non-designated areas.

In the last few months, OWPS has taken a number of steps to clarify policy, improve guidance, and foster communications with Regions, States and grantees. Nevertheless, a number of important decisions still face the Agency. The remainder of this section details our findings and recommendations with respect to those policy areas where we believe further Agency action is required: (1) implementation strategy; (2) the role of the States; (3) the need for public participation; (4) compliance with NEPA; and (5) coordination with other media programs.

Implementing Strategy

The accepted interpretation of Section 208 is that it requires each designated area to develop, implement, and annually update a comprehensive blueprint that will govern all actions to abate water pollution problems in that area, and, potentially, to coordinate all media pollution control efforts. We found during the course of our study, however, that, in most cases, it may not be possible to develop such a comprehensive basis for water pollution control actions during the initial planning effort. The constraints include that:

- A basic comprehensive planning effort is badly out of sequence with the progress that will have been made in other water pollution abatement efforts. In the near term, such an effort would either ratify decisions already made or duplicate efforts and disrupt ongoing programs by re-opening basic questions.
- The maximum of 3 years from date of designation available for planning under the current guidance would in most cases, not be enough time to complete the task, particularly since up to a year of this time is expected to be used in just gearing up for the planning process.
- The basic information is generally not available to support so comprehensive an approach, especially if it is to be coordinated with abatement actions in other media.
- Local agencies have neither the time nor the expertise to devote significant effort to collecting and analyzing all potentially relevant water quality data.

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- Given realities at the local level, it is doubtfut that an adequate comprehensive plan would be approved in a timely manner, or once approved, whether it would be fully enforced. Since the law provides few politically practical enforcement tools, there would be relatively little recourse if either situation developed.

In short, adopting the development and implementation of comprehensive plans as the objective of Section 208 during the initial planning period would have a number of major drawbacks. Not the least of them is the potential loss of EPA's (and the Government's) credibility that would result from raising false expectations through a promise that would probably not be fulfilled.

Such constraints compel the Agency to give careful consideration to alternative strategies for fulfilling the legal requirements of Sec. 208. In our judgment, the most fruitful approach lies in an incremental strategy that takes full advantage of the continuing process mandated in the law to provide more adequate time to develop the comprehensive planning and management capability at the State and local level. Full comprehensive planning and management capability would be achieved during the continuing phase of the process as opportunities arise to complete the necessary prerequisite tasks and to superimpose the new process on ongoing water pollution abatement efforts. In the initial phase, the responsible grantees would consider all the elements required to formulate a meaningful blueprint to control water pollution in a given area. However, EPA would establish clearcut priorities to guide and focus the work of the grantees. The priorities would be expressed in

terms of the independent analysis and detail required of the grantee for a particular planning element to be considered completed and approvable. The priorities would be stated as specific, identifiable outputs which would serve to assure a nationally consistent, measurable program. Flexibility would, of course, have to be preserved to allow for differing local circumstances and varying capabilities on the part of the grantee.

Such a strategy would have a number of advantages:

- It would allow local and State agencies to concentrate on a reasonable number of planning elements at any one time instead of dissipating their efforts on a wide range of complex issues simultaneously.
- It would provide additional time to develop the data base and public inputs necessary to support more complex and controversial control measures.
- It would assure that, at the end of the 2-3 year initial planning process, all local and State planning agencies would have completed a concrete plan with identifiable, measurable outputs.

This approach is based on 3 premises. First, it assumes that the eventual goal of 208 planning is to provide a format for comprehensive planning and management. Secondly, it recognizes that the level of experience, expertise and capability vary from agency to agency and that such planning effort must reflect local circumstances. Thirdly, it requires EPA to define the minimum degree of involvement expected of each agency in the major programmatic areas.

A strategy of establishing priorities naturally raises the question of which planning outputs should be emphasized, or rather what represents an appropriate balance among the various planning elements. A number of local agencies we visited intended to focus their efforts on structural solutions to point source problems or, more specifically, on the construction grants program. This orientation on the part of some local agencies was, apparently, based on their understanding of EPA guidance. Since then, OWPS has reiterated more explicit guidance that 208 was not intended to duplicate work under 201. Other agencies detailed plans for extensive data gathering and analysis. Corrective guidance has been issued in this regard as well. Nonetheless, we think the questions of the appropriate balance among planning outputs is sufficiently important to discuss here.

We believe that the highest priority of 208 planning during the initial (first 2 to 3 years) phase of the process should not be on structural solutions to point source pollution, nor on data gathering. Greater involvement in facilities planning, the NPDES program and in pretreatment issues should occur only as agencies demonstrate a capability in these areas and, more importantly, until programs which give greater attention to other high priority problems are successfully developed. While water quality data is probably deficient in many of the planning areas, most grantees would not be able to build a definitive data base without exhausting their resources.

The problems which we believe is most in need of attention at this time is non-point source (NPS) pollution. There are several factors which have led us to this conclusion:

- NPS problems have been far less adequately addressed in the past than other sources of pollution, even though they

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represent a major portion of the overall pollution load throughout the Nation.

- 208 planning provides a unique format for studying the extent of NPS pollution and for developing viable solutions to NPS problems.
- Efforts to abate NPS pollution would complement ongoing work in the point source area while avoiding interference with other programs. Such activities could provide a basis for the eventual integration of all pollution control planning at a time when integration proved feasible.

EPA's major responsibility at this time is to produce a viable strategy which emphasizes the highest priority elements of 208 planning while indicating the degree to which local and State agencies might become involved in other secondary priority activities. The following recommendations provide a method of accomplishing this.

Recommendations

- The highest priority during the initial planning phase should be on NPS problems. To this end:
  - OWPS should require grantees to include specific NPS-related outputs in the Project Control Plans.
  - Since final NPS guidance will be unavailable until late in the planning process, OWPS should circulate annotated bibliographies which briefly describe available information for each NPS category.
  - EPA's future funding requests to Congress should include proposals for a nationwide program for control of NPS pollution and urban stormwater runoff. Any funds obtained

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would be available to State and local agencies to implement NPS elements of accepted 208 plans.

- Grantees should address management building issues early in the planning process and on a priority basis. In particular,
  - Local agencies (or the States acting for the agencies) should survey all relevant State and local laws which may be applicable to implementation of 208 plans and propose any changes or additions required.
  - Potential management agencies should be identified by the end of the 15th month of the planning process, and the tentative agreement of those agencies to accept proposed responsibilities obtained.
  - Regions should review Project Control Plans and eliminate all proposals to collect or analyze data which are not absolutely essential to formulation of an acceptable plan. In any case, all data to be employed in the development of the final 208 plan should be collected by the end of the 12th month of the planning process. Most efforts to collect data should be focused on identifying the nature and extent of NPS pollution.
- In all cases, 208 agencies should review and provide comments on proposed 201 plans, NPDES permits, and on related pretreatment regulations.
- All 208 agencies should be expected to designate 201 service areas where necessary, and to develop definitive population projections.

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- EPA Regional water divisions and enforcement divisions should negotiate agreements based on nationally developed guidance which define the relationship between the NPDES and the 208 programs. This agreement should include the following:
  - A review by the Regional enforcement division of all 208 outputs related to NPDES.
  - A mechanism for EPA or the State to determine if permits are in compliance with an accepted plan, (i.e., a formal agreement during the planning process specifying who [the State, EPA, or a combination with the planning agency] will assure permit consistency with the plan, and when this process will start).
  - A time frame for bring NPDES permits into compliance with the plan.
  - A mechanism for a joint determination by the third month of the planning process of whether 208 agencies have the capability of completing specific NPDES-related outputs. (e.g. waste-load allocation revisions, adjudication of second round permit conditions, etc.)
- The role of 208 agencies with respect to pretreatment should be to assist State and municipal officials in the enforcement of nationally promulgated standards. Due to their limited expertise and the political problems involved, local agencies should not be required to develop individual pretreatment standards as part of final plans. Nationally promulgated pretreatment standards should, however, be incorporated into the final plans.

- Because of the limited feasibility of using construction grants and NPDES sanctions, Regional enforcement offices should work with the States and the 208 planning agencies to develop local implementation sanctions (e.g., refusing to treat waste water from non-complying constituent local governments, developing locally adopted schedules for implementation of NPS controls, 208 initiated mandamus actions where necessary, etc.)

Beyond these first priority activities, there are a variety of second priority activities which may be addressed by 208 agencies. It is the eventual goal of EPA to have all 208 agencies playing a major role in these areas. Initially, however, significant expenditures of time and resources to accomplish these objectives should be made only where the Regional Administrator and the State are satisfied that: (1) sufficient work has been done on higher priority activities; (2) the agency has the need and the capability to address the items; and (3) work in these additional areas will not disrupt ongoing programs. Second level priorities include:

- During the planning process, Regions may make use of data generated by grantees and use the interim outputs as guidelines in reviewing Section 201, NPDES, and pretreatment actions.
- Grantees may review waste-load allocations and develop additional ones where appropriate.
- 208 agencies may set general parameters for NPDES permits (e.g., the overall acceptable pollution load for a particular stream segment.) The NPDES agency (EPA or the States)

would negotiate permits based on these general parameters and would assure that in the aggregate, the permits are in keeping with them. In a 208 plan, waste load alocations would be expressed in terms of "ranges" in which the NPDES agency would have the flexibility to negotiate with affected dischargers.

- 208 agencies may provide more substantive inputs into the facilities planning process if EPA, the State and local 208 policy advisory committee agree that the 208 agency has the prerequisite expertise and local support.
- 208 agencies may collect and analyze water quality data with the assistance of the States were acceptable data are unavailable and where grantees have necessary time and resources.
- Regions should work with the grantees in developing their role in the pretreatment area. Illustrative tasks include:
  - Analysis of State and local laws bearing on pretreatment.
  - Review of any State or local systems for enforcement of pretreatment standards.
  - Utilization of the 208 planning process as an appropriate vehicle for generating public input into the process of developing national pretreatment standards.

Additional recommendations include:

- NPDES plans and 201 facilities plans should not be required to be in compliance with proposed 208 outputs until the 208 plan is approved. Ensuring coordination among point-source programs should be one aspect of the State's review.

- OWPS should request adequate funding to permit a continuation of the planning process. Funding should be at the 75% level for the first year and at 50% for subsequent years. To aid in assuring that a continuing process is developed:
  - Regions should provide necessary funding to assure State assistance to planning agencies after the initial planning period and to assure involvement by the States in the continuous planning process. Such financing could come from continuing areawide agency "pass throughs", or earmarking a portion of statewide 208 funds.
  - OWPS and Regions should provide guidance to local agencies on how they might obtain necessary matching funds for a continuing process (or, lacking Federal financing, to cover the entire cost of the process).
  - Planning agencies, within the first year of the process, should provide Regions with their strategy for developing a self-sustaining planning process.
  - The State should assume the responsibility for annual plan updates if local agencies are incapable of or unwilling to operate a continuing planning process.

The State Role

There are basically two aspects to the State role with respect to the 208 program. The first concerns the form and degree of State involvement in the work of designated agencies. The second covers the responsibilities of the States in conducting 208 planning in non-designated areas. The decisions EPA makes concerning the State role have the potential for basically changing the nature of the 208 process.

1. The State Role in Areawide Planning.

As was noted above, most States we visited last summer had not yet defined their part in the work of the designated agencies, even though the maximum of each grant allowed under EPA regulations had, in many cases, been earmarked for the State. In some cases, the total "pass through" almost equals the State's share of 106 funds. In several cases, the State was devoting less than a full man-year of effort to this program. Prospects for increased resources are poor because of tight State budgets and personnel ceilings.

EPA guidance until recently, had neither stressed the need for, nor defined the characteristics of, an effective State role in the planning process. This was largely due to the lack of attention to State involvement in Section 208 of PL 92-500 and the lack of recognition by EPA of the need for significant State participation.

The actual level of State involvement will depend on whether the State is inclined to take an active part and has the capability to render effective assistance to local agencies. Nonetheless, States potentially have a very significant role to play in 208 planning. At a minimum, they are ultimately responsible for certifying plans adopted by local agencies. In addition, since they currently have responsibility for many ongoing water pollution programs, they will likely be responsible for implementing many of the elements of accepted plans. Most States also are valuable stores of information on water quality problems and often have much of the technical expertise necessary to deal with such problems.

Recommendations

Recently, OWPS issued revised regulations (40 CFR 130-131) which incorporate recommendations made in our preliminary reports:

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- At a minimum, Regions should require each local agency to negotiate an explicit agreement with its State defining the local-State relationship in the 208 planning process. The agreement should specify a level of funding for the State appropriate to the level of State activity. Regions should participate in the negotiations to ensure that each agreement contains certain minimal provisions including:
  - A process to provide for State review of Project Control Plans, progress milestones, and interim outputs in addition to final 208 plans.
  - A commitment by the State to provide access to relevant State records and water quality information relevant to 208 planning and to provide assistance to local agencies in evaluating and utilizing the data.
  - A commitment by the State to prepare an inventory of the State laws and regulations which are relevant to either 208 plan development or implementation.
- Regions should encourage States to provide additional assistance to local agencies in those areas where local agencies lack necessary resources, time or expertise or where the State can more easily accomplish certain tasks. Examples of such assistance include:
  - Program assistance--coordinating 208 planning with other State planning efforts and providing assistance in the development of 208-oriented State legislative programs.
  - Techical assistance--providing guidance on facilities planning and construction grants activities, providing

assistance in water monitoring and analysis and certifying of laboratories.

- Miscellaneous--providing assistance in selecting consultants, providing population projections and coordinating efforts of contiguous 208 planning areas and related activities.

- Local-State agreements may also, where appropriate, specify any tasks which the local agency may be performing for the benefit of the States.

2. Statewide Planning

The court in the NRDC/EDF case mentioned earlier, reaffirmed the responsibility of States to conduct Sec. 208 planning in non-designated areas. Revised regulations (40 CFR 130-131) have been promulgated in response to the decision. These regulations provide the framework for Statewide planning, State governments and specify that grants will be made to States from funds available under Sec. 208. Two further issues must be resolved to permit the successful implementation of these regulations.

The first is the balance to be struck in terms of funding between future areawide designations and the portion set aside for Statewide planning. Emphasis can continue to be placed on designating additional areawide 208 agencies, with State activities limited to those remaining areas which may need somewhat less intensive attention. Alternatively, OWPS can limit future areawide designations and utilize Statewide planning as the primary vehicle for satisfying additional water pollution planning needs. The new regulations leave the decision to the Regional Administrator. This is not only unfair in that it exposes EPA Regions to a great deal of potential pressure, but will also lead to inconsistent

national practice. We think it is incumbent on HQ to issue guidance on this question. DRAFT

A switch in emphasis to Statewide 208 planning will not, in itself, guarantee that all of the problems identified in the areawide planning process will automatically be overcome. Statewide planning will face many of the same constraints as areawide does. In some cases, State governments are no more prepared to implement a new and complex program than were many of the local 208 agencies. Statewide planning does, however, offer certain distinct advantages and provides EPA with the opportunity to benefit from the lessons learned in the areawide program. The advantages include:

- In general, States have had more experience in dealing with pollution control and have greater access to expertise.
- State environmental agencies may be more likely to succeed in securing enabling legislation necessary for plan implementation.
- States would probably be better able to assure continuing 208 planning efforts.
- Construction grants, and in the majority of cases, NPDES activities are State prerogatives. The needed coordination between 208, 201, and NPDES is, therefore, easier to attain at the State level than at the local level.
- States are more qualified to address NPS problems which occur outside of urbanized areas (e.g. agricultural and silviculture runoff and mine drainage) yet which ultimately affect water quality in those urban areas.

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The majority of the nation's SMSA's have already been partially or entirely designated for 208 planning. Remaining non-designated areas (primarily smaller urban and rural areas) are less likely to have an existing qualified planning capacity and would probably benefit from the expertise and the resources that a State planning agency could bring to the effort. Moreover, the most significant criticism of Statewide planning -- that it would be less responsive to local needs -- may be alleviated by encouraging State governors to appoint local or regional planning agencies to assist the States in preparation of overall plans.

The second issue concerns the substance of the statewide planning in non-designated areas. The question again is whether EPA can expect and should, therefore, require achievement of all of the stated objectives of 208 planning in the initial plan, or should priorities also be set for statewide planning. As was the case with areawide planning, constraints exist which will prevent a successful early development of comprehensive integrated water pollution control planning and management at the statewide level. The process should develop over a period of years with States giving greatest emphasis to those problems which have previously received least attention. Initially, States should be able to rely on ongoing programs to provide necessary outputs in other areas and, as conditions permit, could increase coordination of the entire water pollution control program as the required technical and administrative expertise is developed.

Recommendations

- OWPS should limit further areawide designations to those cases where an area clearly needs areawide water planning

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(primarily large SMSA's) or where particular States are clearly incapable, now or in the future of mounting an adequate statewide planning program. Most additional 208 funds should be distributed among State governments for statewide 208 planning.

- OWPS, in implementing the Statewide Planning Program, should, in general, adopt the same set of objectives recommended for areawide 208 planning. While States should be better able to integrate Statewide 208 planning with the construction grants, NPDES and pretreatment programs, the main emphasis should continue to be on solving NPS pollution problems and building sound management structures for plan implementation.
- To assure that adequate State programs are generated, States should be required to submit an initial scope of study that includes at least the following outputs:
  - Analysis of all State and local laws impacting NPS pollution control and suggestions and revisions or additions where necessary.
  - Development of a management strategy for implementing the plan 6 months prior to plan completion.
  - Formal procedures for coordinating with other agencies of the State government responsible for activities under PL 92-500 and for abatement activities in other media.
  - Preparation of a detailed policy for integrating areawide plans into the continuing State planning process. This policy should address the specific elements of areawide

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plans to be included in statewide plans, e.g., waste load allocations and modeling.

- Preparation of and responsibility for a strategy to ensure compliance with applicable pretreatment requirements.
- Preparation of environmental assessments on each statewide plan to allow, where advisable, piggyback EIS's.

- OWPS should ensure that appropriate guidance -- for example, management procedures and NPS technical assistance -- is available in time to impact initial program development.
- OWPS should define the criteria by which the final statewide plans will be judged.
- OWPS should establish a system of interim outputs similar to that suggested in the "Measuring Progress" section of this report.
- OWPS should either provide States with front-end funding (for example, 5% of expected total grants) for work plan preparation or agree to reimburse States for expenditures in this area. No additional funding should be made available, however, until the final work plan is approved.

Public Participation

P.L. 92-500 requires that a public participation program be developed to ensure public knowledge and support of the entire water pollution control effort. Experience has shown that ensuring adequate public participation is a very elusive goal. Yet because there is a lack of effective sanctions to ensure completion and implementation of 208 plans, the support of an informed, concerned public is especially critical in the 208 program. We found, nevertheless, that the level of emphasis given to building strong

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public support for 208 varied significantly from agency to agency. The Centaur Management Study found, for example, that the amount budgeted for public participation varied from as little as .05 percent to 20 percent of the total grant award. Such variation reflects the lack of sufficient attention given by most grantees to an adequate public participation program. Without a serious effort designed to obtain maximum benefit from a public participation program, the ultimate local objectives of State certification and willing implementation will be difficult to obtain.

An adequate public participation program should have at least these three following elements:

- The periodic dissemination of all relevant information on the plan in an understandable form to all interested parties.
- The creation of effective channels through which the public can meaningfully impact the final plan.
- The development of a constituency which will support the approval and implementation of the plan.

Recommendations

- Regional offices should require each grantee to submit a detailed public participation strategy no later than three months into the planning process. The strategy should:
  - Describe specific approaches to provide for public education, promote public input, and develop public constituencies
  - Specify the number and timing of public hearings to be held
  - Delineate the procedures which will be used to factor public comments into the planning process
  - Specify the resources to be devoted to the effort.

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- Regions should approve each strategy and hold the grantee to the commitments made in it.
- EPA's Public Affairs Office, with the help of OWPS, should prepare a 208/public participation handbook. It should contain a "model" program and discuss the elements and objectives of good public participation, illustrated with examples of success and failure in actual public participation programs.

Minimizing Adverse Environmental Impacts

A major requirement of a sound planning process is that the actions it recommends do in fact benefit the environment with a minimum of adverse secondary impacts. Most local agencies are aware of the requirement to prepare an environmental assessment (EA) as part of the 208 plan. However, a policy on whether an environmental impact statement (EIS) is required is not yet settled. Section 6.504 and 6.510 of the final EIS regulations published on April 14, 1975, do in fact apply the National Environmental Policy Act (NEPA) to the 208 program. Region IX is already implementing these regulations and has put its local agencies on notice that EIS's will be prepared on all 208 plans. Other Regions either have not resolved the issue or are opposed to the requirement, as are many of the respondents we interviewed at the State and local level.

The rationale against requiring EIS's is based on Section 511(c) of PL 92-500, which exempts all EPA actions except 201 and new source permits from NEPA requirements. Given that EPA resources in 208 are very limited, the argument continues, there is no reason that EPA should go beyond the requirements of PL 92-500. Furthermore, 208 plans are generally on tight schedules for completion within the 2 year deadline. An additional EIS requirement might only cause further delays in the planning process.

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Finally, if the 208 plan is done properly, its basic purpose is to improve the environment. EIS's on 208 plans would, therefore, be redundant and unnecessary.

Even through an EIS is not required by PL 92-500, a strong case can be made for requiring it administratively. EPA would be acting more in the spirit of NEPA and in accord with the requirements placed on other Federal agencies if it did EIS's on 208 plans. EPA has a special concern for the environment and should set an example for others. Moreover, even though the results of 208 plans, like 201 plans, are intended to improve the environment, EIS's would act as safeguards. In fact, an adequate EIS on a 208 plan could, in some instances, satisfy the need for EIS's on each individual 201 plan in the planning area. Also, not doing EIS's could potentially be a very controversial decision, leading to delays in the implementation of a plan.

We recognize that a policy which requires EIS's on all or most 208 plans could result in undesirable time delays. Moreover, the imposition of NEPA on the program will likely entail a resource burden for local agencies, even if EPA or a contractor does much of the actual work. We believe, nevertheless, that both the letter and spirit of NEPA will be met only if EPA implements its new regulations.

The reluctance to assume the responsibility for preparing EIS's stems from the difficulties experienced in the initial stages of the construction grants program. With time, however, the Agency has gained enough familiarity with the process so that the task should no longer seem quite so formidable. In particular, the new regulations permit the use of two techniques which should substantially simplify and shorten the task of EIS preparation. These are

- the "layered" EIS, where an acceptable EA is used as the supporting document for a shorter impact statement and

- the "piggyback" EIS, where EPA manages development of the assessment and thereby satisfies the requirement for an impact statement as well.

We found that the "piggyback" EIS to be more appropriate for 208 in that the EIS can be completed simultaneously with the 208 plan. This eliminates the post-plan completion preparation time required by the "layered" EIS. This preparation time raises the possibility of many months of delay caused by EIS-required revisions to the plans. Furthermore, the "piggyback" EIS is preferable since it calls for EIS considerations during the process rather than after the fact.

Recommendations

- Regional Offices (and grantees) should proceed on the assumption that an EIS will be required for each 208 plan although in some cases a negative declaration may be adequate.
- The "piggyback" approach should be utilized in the preparation of EIS's.
- Regional Offices should negotiate agreements with the grantee, stipulating the timing and management of the EA. Regional Offices should allocate adequate manpower to work on the EA's or request funding from Office of Federal Activities to retain consultants to do the work.
- Equal priority should be accorded at Headquarters and in the Regions to EIS's on 208 plans, 201 plans and new source permits.

Relationship to Other Media Programs

As part of this evaluation, we attempted to determine the amount of attention given to the cordination of 208 planning with other media activities such as air quality, water supply, and solid waste planning. While PL 92-500 makes only limited reference to inter-media coordination, EPA's program guidance does address the need for coordination between 208 planning and air

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and solid waste planning; until recently the guidance did not, however, cover water supply issues.

Despite the guidance, we found substantial divergence in Regional and local intentions for coordinating 208 planning outputs with other media activities. While several Regions have developed programs which call for a review of 208 plans by air offices at the Regional and/or State level, others have not yet developed a policy on how coordination would be pursued.

Air Programs

The need for some sort of relationship between water and air planning at the local level is evident in that 88 local agencies share at least a portion of their planning district with Air Quality Maintenance Areas (AQMA's). It is naturally desirable to avoid producing conflicting outputs in these areas. There is, moreover, a potential in some cases for 208 agencies and relevant AQMA offices to cooperate in avoiding duplication of efforts--for example, in developing population and land use projections.

Water Supply

Much the same situation exists for water supply planning as for air quality planning in terms of the potential need for coordination with 208 efforts. The tie between 208 and water supply planning is, in fact, even more direct because of the likelihood that 208 planning decisions could directly affect both the quantity and quality of the raw water available for public drinking water utilities. During our Regional visits, we found only one example of the 208 agency which expected to give more than superficial attention during the planning process to water supply problems.

Solid Waste Planning

While solid waste planning (and particularly planning for disposal of residual sewage waste) is becoming increasingly necessary in some areas

of the country, it appears that only a relatively few 208 agencies have such severe problems that they should be required to devote serious attention to it. In lieu of developing a national requirement for 208/solid waste coordination, Regional project directors should individually evaluate local situations and determine the level of solid waste planning necessary. Regional project directors could also draw on expertise available from the Office of Solid Waste Management Programs to assist local 208 agencies in areas with significant solid waste disposal problems.

Recommendations

Despite the desirability of integrating efforts of 208 agencies with the program activities described, the issue of inter-media coordination beyond the preparation of an EA/EIS must, in most instances, receive a second level of priority by local agencies during the 208 planning process. Coordination will not be accomplished without some cost, not only in money and man-hours but also in potential bureaucratic tangles.

We found that most 208 agencies considered the required water pollution control tasks alone to be more than they could do in the given time frame. Coordination with local air pollution control agencies, although stressed by some Regional Offices, was considered a lower priority item. We would suggest that the Agency not overload the present 208 process with air requirements, nor develop a 208-like effort in the air program without resolving the present 208 deficiencies.

Consequently, we think that low priority should be assigned to intermedia coordination during the initial planning phase. We recommend that:

- States discharge, on behalf of the local agencies, the responsibility for coordinating 208, air, drinking water, and solid waste planning.

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This responsibility should be specified in the explicit State/local agency agreement discussed above.

- State costs incurred in performing this function be defrayed with Federal funds either from Section 106 grants or from an additional pass-through of Section 208 funds.
- Regions perform a formal inter-media review of all Section 208 outputs and final plans.

Beyond this, certain local agency activities could be desirable under favorable conditions. Any additional activities, however, should only be attempted if, in the judgement of the Regional Office, circumstances warrant it. Possible actions include:

- Concluding agreements with appropriate State and local offices responsible for other media planning. Agreements would include sharing of technical information and mutual review of outputs.
- Coordination on drinking water problems with EPA/State efforts under the Safe Drinking Water Act (SDWA). Appropriate activities in this regard might include:
  - Conducting an inventory of all existing community water supply systems
  - Reviewing water supply needs and construction plans projected by these systems
  - Evaluation of groundwater supplies (in coordination with the implementation of the SDWA).

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III. PROGRAM MANAGEMENT

While an assessment of the management of the Section 208 program was not our primary focus, it became clear in the course of the study that many of the problems, including some of the most pressing ones, may be traced to a lack of attention to management needs. Although we found a program that was still very much in its early stages, it was clear that improvements must be made by all levels--Headquarters, the Regions, and the local agencies. Specifically, additional steps are required to:

- Clarify the responsibilities of Headquarters, Regional offices, States, and local agencies through clear, comprehensive program guidance.
- Insure that Regions are organized in a manner that will enable them to discharge their responsibilities efficiently.
- Strengthen systems for measuring program performance.
- Improve financial controls over the grant funds, particularly at the local level.

Program Guidance and Communication

We noted the lack of adequate guidance at several points in previous chapters, but the point is worth repeating here. Many of the problems in the 208 program, are in our judgement, due either to the lack of adequate guidance on a timely basis, or to the failure to communicate existing guidance effectively.

A number of local agencies claimed that guidance--for example, workplan handbooks--either did not reach them or reached them too late to be of use. The Centaur Management Consultant, Inc. draft report revealed that 45 agencies received the workplan handbooks too late to be useful. Other local agencies reported that they found some of the EPA guidance of limited value.

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EPA's program guidance is inadequate primarily for three reasons:

- The Agency has failed to resolve a variety of policy issues in a number of important areas (for example, facilities planning, NPDES, and pretreatment) making it impossible for OWPS to develop a comprehensive program strategy.
- The workload that resulted from the priority placed on getting the 208 progam moving left little time for the promulgation of complete and timely guidance.
- There are currently an insufficient number of individuals assigned at EPA HQ to work on NPS problems.

OWPS is sensitive to the problem and has taken corrective steps. The major areas where program guidance must be further improved are financial management, management/institution building, NPS technical guidance, and program inter-relationship.

Financial Management

Financial management problems are discussed more fully later. With respect to guidance, however, we have already recommended that the Office of Planning and Management (OPM) provide technical assistance to OWPS in this crucial area. OPM has responded by holding joint Regional workshops with OWPS covering the following areas:

- Establishing indirect cost ratios.
- Assuring adequate procurement procedures
- Providing for cost analyses.
- Explaining new grant regulations.

Management/Institution Building

We consider one of the main thrusts of Section 208 to be the development

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of local management institutions for pollution abatement where none or only inadequate ones exist now. However, we found that many 208 agencies are uncertain on how to proceed. We, therefore, recommend that OWPS develop and conduct workshops for the 208 planning agencies on how required local regulations and ordinances may be developed, what successful pollution controls have been adopted in other communities, when these controls should be scheduled in the 208 process, etc.

NPS Technical Guidance

Most 208 agencies will soon be fully engaged in the planning process. Since EPA's guidelines on NPS control procedures will not be completed until late 1976, many Regional, State, and 208 agency personnel are concerned that much of the local agencies' basic NPS planning and analysis will be duplicative. We recommend that OWPS use EPA's library services to issue annotated bibliographies of existing NPS research to all 208 agencies. This administrative action could possibly save EPA and the 208 agencies millions of dollars by avoiding duplicative research and analysis. OWPS should also re-evaluate its own organizational arrangments and attempt to assign a higher level of resources to the NPS area.

Program Interrelationships

The relationship of Section 208 to many other agency environmental programs has yet to be defined. Guidance is being developed but has not yet been issued in all areas. In lieu of clear guidance on programmatic relationships, 208 agencies could fail to do anything, or could develop policies which might be contradictory to subsequent EPA strategy. We, therefore, recommend that EPA develop policy regarding the relationship of Section 208 to other environmental programs. Portions of this report offer specific recommendations on what should be included in new guidance packages.

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Regional Organization

We did not attempt to conduct an in depth evaluation of EPA's Regional organization. We did, nevertheless, encounter a variety of Regional structures and reached some conclusions on which seem to operate efficiently. We encountered three basic types of organizations:

1. A separate section or group within the Water Division responsible only for the 208 program.
2. A planning section or branch in the Water Division responsible for both 208 and 303(e) planning and possibly other small planning efforts.
3. A comprehensive planning branch responsible for all water planning activities including 208, 303(e), and 201 facilities planning.

Each form of organization offers particular advantages and disadvantages. The separate 208 section assures a greater focus on the 208 program while the most comprehensive operation tends to relegate 208 planning to a secondary position relative to facilities planning. On the other hand, the first organization faces potential coordination problems with other related planning activities, while the third approach assures greater coordination and integration. We conclude that the second type or organization--a planning unit responsible for 208 and 303(e) planning (and in the future, Statewide 208 planning), but not 201 planning--is a preferable compromise. This unit should be a branch headed by a GS-14 branch chief to permit him to deal effectively with other program managers.

As part of the study, we also tried to gather data on the resources devoted to the program. The following chart is based on information supplied by the Regions:

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Regional Manpower For 208 and 303(e) Planning

		Regions									
		I	II	III	IV	V	VI	VII	VIII	IX	X
208	Positions	14	7	8	5	16	5	5	7	16	7
	Actual Man Years	5.8	5.2	6.2	3.8	7.3	1.6	3.0	4.8	7.3	3.6
303(e)	Positions	6	6	5	12	11	5	4	4	17	5
	Actual Man Years	.8	1.6	4.2	12	3.0	1.6	.9	1.5	3.8	1.9

While we did not analyze manpower utilization in detail, it appeared in Regions visited that insufficient resources were being assigned to the program. In one case, for example, one project manager and a staff of three had total responsibility for monitoring the activities of 28 208 agencies. It is also clear that if additional duties are assigned to these offices (for example, Statewide 208 planning or new designations) significant problems must be anticipated.

Since not all Regions were visited, we are not prepared to make specific, Region by Region resource recommendations for the 208 planning program. We do, nonetheless, recommend that:

- Each Region evaluate its 208/303(e) needs and assign, on an as-needed basis, temporary positions to the program to assist in program operation.
- EPA Headquarters and the Regions evaluate overall manpower needs before making further commitments in the planning area, particularly for Statewide 208 planning.

Measuring Progress

The main elements of the existing system for measuring progress in the 208 program consists of four interim outputs to which OWPS has required all 208 agencies to commit (see OWHM-Areawide Management

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Guidance Memo AM-3). The four outputs are, however, basically oriented to one element of the planning process -- developing data for 201 facilities planning. They do not provide a mechanism for measuring the 208 agency's overall progress.

In addition, OWPS has recently required Regions to complete agency "profiles" which describe in detail the objectives of individual 208 agencies and the key elements of their Project Control Plans. The profiles may be used as formats for discussions of 208 agency progress during visits by Headquarters personnel to the Regions. OWPS recognizes, however, that they are not a satisfactory mechanism for measuring program performance because Regions will not be expected to update the profiles on a formal, continuing basis. Furthermore, neither the Regions nor 208 agencies are expected to commit themselves to specific program outputs in the profiles.

We believe that a reliable system for measuring program performance is more essential in the 208 program than most EPA activities. In 208, the Agency obligates itself to support a 2-3 year planning process. Unless good interim measures of progress are developed, the Agency can easily find itself at the end of this period without a clear idea of what a local agency will produce. An adequate reporting system will indicate if any agency is failing to progress at a reasonable rate and will allow EPA to take necessary remedial action.

An adequate tracking system need not involve a new complicated effort. The necessary information can be obtained by using the Agency's Formal Planning and Reporting System (FPRS). Based on our evaluation of the goals of the 208 program and the needs for more centralized management, we have developed an initial list of potential 208 outputs

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which may be included in the FPRS. Basically, they reflect the relative priorities of various program elements recommended in other sections of this report:

- An inventory within the first 9 months of the formal planning process of all existing State and local laws and regulations governing control of NPS pollution.
- A projection of needs for changes in State and local regulatory systems governing NPS control, within 12 months.
- A strategy document, to be developed within 15 months, which sets priorities for NPS control and describes the levels of emphasis (degree of analysis, tentative control procedures, etc.), to be given to various NPS problems and solutions.
- A completed EA -- and in most cases a draft EIS -- by the 18 month of the planning process. If the Regions intend to utilize the piggyback approach, they should inform grantees by the third month of the planning period that an EIS will be required.
- A skeletal 208 plan (the scope and detail to be defined by the Region) no later than 18 months into the planning process. This draft plan should include a proposed list of management agencies.
- By the end of the 15th month, a detailed plan which provides a strategy and a schedule for obtaining approval of a completed plan by local governments in the 208 area.
- The interim outputs (land use and population projections plus, 201 service delineations and waste load allocations) described earlier in AM-2, within 9 months.

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Recommendations

- OWPS, in conjunction with Regional 208 offices, should evaluate the proposed 208 program outputs and agree on an appropriate list of program objectives which may be included in the FPRS. The Director, Program Reporting Division of OPM, will assist OWPS in developing the system.
- Regional Administrators should withhold approval (or at most, conditionally approve) 208 agency Project Control Plans which do not commit the agency to the accomplishment of the objectives noted in the FPRS guidance.
- OWPS should rely on frequent visits to Regional Offices, particularly those Regions lagging in the completion of FPRS outputs, to obtain additional information on the operation of the 208 programs. No other formal reporting or tracking system should be utilized.
- Agencies which show unsatisfactory progress should receive immediate attention at the Regional level. If sufficient improvement is not noted in an agency's efforts, steps should be taken to de-designate the agency and to either appoint a new local agency or designate the State government as the responsible planner.

Financial Management

It was apparent early in the 208 study that many of the new and less sophisticated 208 agencies were having, or could have, serious financial management problems. A review of the pre-award and interim audits and interviews at Headquarters, Regional Offices and local 208 agencies indicated that even some of the more established and experienced 208 agencies needed some form of additional guidance.

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OWPS recognizes the seriousness of the problem and, with the support of the Office of Planning and Management (OPM), has begun an intensive effort to help grantees adopt acceptable fiscal practices and safeguards. Even so, a review of 3 recently completed interim audits indicated that in at least these instances, serious finncial management problems continue to persist at the local level*

Accounting for Agency Funds

During our initial evaluation, we found that even though Agency regulations require an audit of the financial management capabilities of the potential grantee prior to award only 38% of such audits had been completed by June 30, 1975. Many pre-award audits are still being conducted. Of the audits received in Headquarters, Office of Audit (OA), by June 30, 1975, 25% identified such basic deficiencies that OA recommended that no grant be awarded to the grantee until corrections were made. Examples of recurring problems noted in the audit reports include the lack of established personnel compensation and benefits policy, reasonable indirect cost ratios, approved allowable costs, and property management systems.

Many Regions have not taken appropriate steps to ensure that deficiencies noted in these audits are corrected. Regions pointed to the shortage of qualified personnel as a factor in the lack of attention given to audit-related problems. While we accept the validity of this factor, in our judgment inadequate communication between some Regional Offices and the Regional audit site is a contributing factor. Also OWPS had not until recently paid enough attention, overall, to resolving such problems, partly because it had not been aware of the serious nature of the situation.

*See Audit Reports; #E5W6-05-071-438, #E5W6-04-004-226 and #E5W6-05-072-372

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Recommendations

- OA should accord pre-award audits on 208 agencies a priority equal to construction grant audits. OA should act expeditiously in completing remaining pre-award audits. Where resources are available OA should also attempt to conduct followup interim audits.
- Copies of all pre-award audits should be sent by Regional Audit sites to the Director, Water Planning Division, so that correction of deficiencies may be pursued by Headquarters program personnel. Regional Offices should inform the Division of any significant deficiencies noted in pre-award audits which the Regions are unable to correct.
- No Project Control Plan should be approved until all major deficiencies in the grantee's financial operations have been corrected or are subject to an adequate schedule for correction. Regional Offices shall be held accountable for failure to correct identified problems.
- OPM should provide expertise on accounting procedures to the Regions as requested.

Local Agency Procurement

Many agencies need and have sought guidance on contractor selection, negotiation and monitoring of contracts, and procedures for performing cost/price analysis. This information, however, has not always been effectively communicated by the Regional Office or Headquarters. Many EPA grants administration officials at the Regional level reported that potential savings to the program were lost because of insufficient attention to contracting proposals. The solution offered by these officials is to subject all major local agency contracts to close scrutiny

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by a qualified cost analyst. EPA's new subagreement regulations 40CFR Part 35 Subpart A require that all contracts in excess of $100,000 be evaluated by EPA to assure that contractors are pledged to provide a reasonable level of services relative to the negotiated price of the contract. While it is apparent that such analyses would benefit both EPA and local 208 agencies, it is not clear whether Regional Offices are appropriately staffed to discharge this responsibility.

Recommendations

- Grants Administration Division should: make staff available at Regional workshops on request to provide instruction on grant regulations, coordinate preparation of instructive questions and answers on a broad range of financial management aspects of the 208 program and compile a list of financial management specialists (by name, location, phone number and area of expertise) so that Regional personnel and grantees may directly contact those individuals for specific information.
- Two cost analysts in the contract Management Division should be assigned to the 208 program. They should continue to remain available for regional workshops on cost analysis.
- OPM should determine if the Regions require additional resources for cost analysis.

Funding Local Agencies

Many local 208 agencies have been given all of the permissible 10% of their total grant funds as an advance payment to cover initial operating expenses. These funds are replenished periodically as the agencies utilize the advance. This process has, in most cases, resulted in large amounts of money lying idle at the local agencies and,

concomitantly, premature expenditures from the U.S. Treasury. Some local agencis have invested these funds in interest-bearing accounts with the expectation that the money earned could be used for agency operating costs. OA, however, has informed some of these agencies that Federal regulations prohibit local agencies from retaining interest earned on Federal funds. There is an apparent difference of opinion concerning the legal basis for this decision which has not been resolved.

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The larger question of why local agencies require such large amounts of advance funding also must be resolved. An alternative to providing advance payments to local agencies lies in utilizing a "Letter of Credit" (which Treasury regulations strongly recommend). Letters of credit allow local agencies to draw on what is in effect a checking account. Actual funds remain with the Federal Government.

Recommendations

- The Financial Management Division should encourage use of the Letter of Credit payment method, and should institute other grant payment procedures which satisfy the immediate funding needs and cash flow
- The Financial Management Division should make staff available for Regional meetings to provide instruction on grant payments methods, regulations, and the Letter of Credit payment method.
- The Letter of Credit in itself is not a panacea for local fiscal irresponsibility. Regions should develop a monitoring system to ensure that 208 funds are being properly expended.

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- OA and the General Counsel should resolve the issue of whether or not local agencies may earn and keep interest on federally provided funds. If they legally may do so, Regions should require that those agencies which remain on an advance payment basis invest any excess funds in interest bearing accounts and utilize the proceeds to further 208 activities during the 2 year planning period.

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208 POLICY STATEMENT

I. Purpose

The purpose of this document is to express EPA's basic policy on: (1) the goals of 208 planning; and (2) the relationship between 208 and the other major efforts under the Federal Water Pollution Control Act Amendments of 1972.

II. Goals

The goals of the 208 program are to:

A. Fulfill the legal requirements of §208 of the FWPCA in a manner that will complement and reinforce (rather than duplicate or supplant) other ongoing efforts at the Federal, State, and local levels to abate water pollution.

B. Focus the expenditure of §208 funds on those water pollution problems that can best be solved through the 208 mechanism.

C. Foster abatement action by placing emphasis on the development of institutions and management systems for implementing NPS control programs rather than on data gathering and analysis.

In view of the limited resources available to the program, the complex set of outputs required by the law cannot be achieved simultaneously. Therefore, EPA and the States will implement the 208 program through establishing clearcut program priorities. The priorities will be reflected in the level of detail required of the grantee in fulfillment of a requirement, and in the phasing of its completion. The initial plan to be completed by a grantee is regarded as only the first step in the continuing planning process required by the law.

During the initial planning stage, the efforts of designated agencies and funded States shall be directed toward the accomplishment of a limited number of high priority outputs. The focus of these outputs should be to identify the causes of nonpoint source problems (including urban runoff and storm water discharges), to devise workable solutions, and to develop local management systems for implementing NPS control programs. On the one hand, the 208 program is virtually the only mechanism for addressing the NPS control procedures required to meet the 1983 goals. On the other hand, the limited resources under this program should not be concentrated on the already functioning point source program.

Outputs during the initial planning stage, will in all cases include, but not be limited to:

- An inventory, within the first 9 months of the planning process, of all existing State and local laws and regulations governing control of non-point source pollution.
- The interim outputs required by AM-2, including population projections, land use projections, 201 service area delineations, and, where requested by the State, waste load allocations.
- A projection of needs for changes in State and local regulatory systems governing NPS control, within 12 months.
- A strategy document, to be developed within 12 months, which sets priorities for NPS control and describes the level of emphasis (degree of analysis, tentative control procedures, etc.,), to be given to various NPS problems and solutions.
- A list of proposed management agencies by the end of the 12th month.

- A completed Environmental Assessment--and where necessary a draft EIS--by the 18th month of the planning process. If the Regions intend to utilize the "piggyback" EIS approach, they should inform local agencies by the third month of the planning period that an EIS will be required.
- A skeletal 208 plan (the scope and detail to be defined by the Region) no later than 18 months into the planning process.
- A completed plan by the required deadline which details the process and management framework for implementing necessary controls for the major NPS of pollution for the area.

Any additional outputs during this stage must be approved by the State and the Regional Administrator. Such work should be limited in scope and complementary to other ongoing water pollution control efforts at the Federal, State, and local levels.

In most cases the state-of-the-art for NPS control is quite limited. EPA, therefore, will not expect 208 to solve the nation's NPS pollution problems in the initial 2 - 3 year planning period. EPA will, however, expect 208 to make significant advances in NPS control. These initial NPS control efforts should be gradually expanded as the continuous planning effort gains increasing momentum.

III. Relationship to Ongoing Programs

Planning conducted under Section 208 by designated agencies or by the States shall be limited in scope and directed towards accomplishing the long-range goals of the FWPCA. In particular, all activities conducted with Section 208 funds will be carried out in a manner that will complement ongoing efforts, especially the expeditious funding and construction of urgently needed wastewater treatment works. Furthermore, no 208 work

plan, interim output, or final plan will be approved if duplication of other EPA, State, or local efforts will result.

A. The Relationship of Areawide and Statewide 208 Planning Agencies

Section 208, as interpreted by the courts, requires the States to conduct 208 planning for all areas not covered by existing local agencies at a level necessitated by varying conditions in non-designated areas.

It is expected that State and local agencies will cooperate to the degree possible in the development of their final 208 plans. Where appropriate, local and State planners should share relevant outputs (e.g., population projections) or work jointly in developing overlapping outputs. Statewide and Areawide grantees should moreover, mutually review each others' outputs to help assure consistency. This is of particular importance where there is a shared State/local interest in any proposed regulatory program for identified pollution problems.

If any local planning agency fails to show adequate progress in developing required outputs, Governors, may with EPA Regional concurrence, de-designate the local agency and either appoint a new Areawide agency or have Statewide agencies assume responsibility for developing a local plan.

B. 201-208 Relationship

The expeditious completion of 201 facilities plans will continue to be a high priority objective of EPA. The formal relationship between the 208 and 201 programs will reflect this priority and will assure that ongoing facilities planning is not subjected to unnecessary delays or restrictions.

The 201 process is now evolving into an effective mechanism for satisfying the requirements for sound and cost effective facilities

planning. Because of this, it will be unecessary for 208 agencies to provide a significant amount of detailed planning information for municipal facilities. Step I grantees will retain primary responsibility for the preparation of detailed 201 plans in all cases.

During the course of the initial planning period, 201 grantees will continue to develop facilities plans. These outputs will be incorporated as the municipal facilities portion of 208 plans. 208 agencies will play a role in the process through the development of broad parameters for facilities planning (e.g., population projections, service area delineations, etc.) for those areas not already subject to facilities planning. In general, 208 agencies will not be responsible for evaluating ongoing 201 facilities plans or for providing more detailed 201 related outputs unless requested to do so by the State.

No 208 agencies should have responsibility for the actual development of detailed 201 type plans. Any 208 workplan which includes responsibility for detailed 201 planning by a 208 agency should be renegotiated.

Future facilities planning will continue to be done by designated 201 grantees which are to be identified by 208 agencies no later than 1 year into the planning process. These agencies will rely on the broad planning parameters supplied in accepted 208 plans. States will assure that 201 plans designed after the adoption of final 208 plans are consistent with with these parameters.

C. NPDES 208

The 208 programs' relationship to NPDES is based on Section 208(c):

> No permit under Section 402 of this Act shall be issued for any point source which is in conflict with a plan approved pursuant to subsection (b) of this section.

Given this very broad reference to NPDES, EPA policy on the 208-NPDES interface will be to further the progress of NPDES and thereby avoid bottlenecks in the permit program.

The States and EPA have been very sucessful in implementing NPDES. EPA will support in this successful process by requiring that 208 plans reflect the BPT and BAT goals of PL-92-500. EPA and the States will assure that these goals are being met during the second round issuance of municipal and industrial permits.

Additionally, instances where EPA and the States agree that 208 agencies have the expertise to play an additional role, more NPDES-related outputs, mainly waste load allocations, can be developed by the agencies. However, the States and EPA will determine the acceptibility and applicability of these additional outputs, and more importantly, the consistency of permits with the 208 plan.

D. Pretreatment-208

EPA, the States, 208 agencies, local municipalities and sewerage authorities will all play a part in developing and implementing pretreatment requirements. P.L. 92-500 requires EPA to promulgate national pretreatment standards to serve as the basis for Federal and State enforcement programs. Due to the technical difficulty in developing these standards, EPA may propose only a few critical standards at first. The 208 agencies and other municipalities will play a complementary role in adopting these national pretreatment standards in the form of local ordinances. EPA may wish to encourage a few technically sophisticated agencies which have acute pretreatment problems to develop local pretreatment programs on an experimental basis.

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E. 208 Coordination with other Media

Regional officials should view the 208 programs as an opportunity to acquaint other media planners with the problems and needs of water quality planning. To assure the 208 planning efforts are not inconsistent with the objectives of these other activities, elements of the Regional Offices responsible for air, water supply and solid waste planning should periodically review relevant 208 agency outputs. Local 208 agencies will not be expected to devote extensive time or resources to achieving coordination with these media, although Regional Offices and the States should require agency attention to any problems which are of particular significance if the local agency has the necessary capacity and expertise. In all other instances, the Environmental Assessments and EIS's prepared for 208 plans will serve as the vehicle for identifying inter-media coordination issues.